

WEST TISBURY
CONSERVATION COMMISSION
MINUTES OF MEETING
November 29, 2021

The meeting was held via Zoom in accordance with the Governor's order suspending certain provisions of the Open Meeting Law, G.L. c.30A sec.20. Public participation will be via remote participation (Zoom) pursuant to M. G. L. Chapter 20 of the Acts of 2021.

Present: Geraldine Brooks, Whit Griswold, Angela Luckey, Donna Paulnock, Peter Rodegast and Michael Turnell

Absent: John Brannon

Staff Present: Maria McFarland

Also present for all or part of the meeting: Robert Doane, Cheryl Eppel, Ben Hall, Richard Hennessey, Richard Johnson, Chris Lucas, and Scott Smyers

Map 31 Lot 48: a public hearing under the requirements of G.L. Ch.131 § 40, as amended, and West Tisbury Wetlands Protection Bylaw and regulations, to consider a Restoration Plan submitted in response to an Enforcement Order issued by the Commission to Nancy B. Eppel individually, and as Trustee of the Nancy B. Eppel Revocable Trust u/d/t dated October 31, 2014, and Cheryl C. Eppel for a wetland violation that took place on property located at **21 New Lane** owned by Robert A. Doane and Cynthia L. Doane, Trustees of the Irrevocable Living Trust of the Doane Children u/d/t dated May 3, 1989 as amended. The quorum for this public hearing which began on October 12, 2021 is Angela, Donna, Geraldine and Peter.

The following documents are noted for the record:

- Map 31 lot 48: Revised Restoration proposal and plan from Oxbow Associates dated November 4, 2021
- Email from David Paulson of NHESP dated November 5, 2021
- Map 31 Lot 48: Email from Richard Reiling dated November 2, 2021 transmitting a copy of lawsuit filed by Ben Hall Jr re: *Robert A. Doane et al. v. Nancy Eppel et al.* presently pending in the Dukes County Superior Court (Civil Action No. 2174CV0030). Note: To date, the Commission has not been formally served with this complaint.
- Map 31 Lot 48/Email from Ben Hall dated November 4, 2021
- Map 31 Lot 48/ Letter from Ben Hall dated November 8, 2021
- Map 31 Lot 48/ Letter from Lucas Environmental, LLC dated November 8, 2021
- Letter from Ben Hall dated November 29, 2021.

No testimony was taken at the November 9 meeting because of an error in the link for meeting held via Zoom.

Whit called on Scott to go over the proposed changes to the restoration plan that were discussed at the October 26 meeting and detailed in the draft restoration plan dated November 9, 2021.

The current proposal is to plant one Cherry tree, two Cedar trees and one Beech tree (approximately 1" diameter/ 6-8 ft high and 18 native shrubs at least 18 to 24 inches in height

and /or in one-gallon containers. Shrubs would be concentrated in the northern area above the yellow line shown on the plan. The proposed location of the trees takes into consideration the open canopy. In Scott's opinion, the best canopy is closer to the edge of the wetland. Shrubs will include a mix of sweet pepperbush arrowwood, high bush blueberry, and swamp azalea. Soils will be hand dug, placed on a tarp or plywood and reused around the new plants. No new soils will be imported. Staff from Oxbow Associates will monitor the work and submit a progress report within 10 business days of completion and annual reports for two growing seasons by October 31.

Issues Discussed:

Trees and Shrubs: After a very lengthy discussion about the tree selection, all parties agreed that two white Oaks and 2 Eastern Red Cedars are the most appropriate trees to be planted. In consultation with his client during the hearing, Scott and Robert Doane asked for approval of trees that are 4- 6 feet high. Mr. Doane said he was ok with whatever is chosen as long as it replicates what was there before and is ecologically ok. He said he was fine with the cedar and oak choice but he would prefer to exactly what was removed. The combination of shrubs can be from the submitted plant list and the size.

Distance from top of bank: Scott does not want to be restricted from planting within 10 feet of the bank. In his opinion, that is where the canopy is most open. Commissioners determined at their October site visit that no trees along the top of the bank and none needed to be planted in this area. A photo of Mike standing approximately 10 feet from the top of the bank shows a fair amount of open space. Michael said that since the October site visit, the area has most likely seen additional regrowth.

Time of Year: Whit asked the board if, given the delays in approving this did the board want to revisit the timing of the planting. Members did not. The members discussed the need for a start date. It will be left up to the Doanes and their consultant based on planting conditions.

Monitoring: The restoration plan provides for a summary report to be submitted to the Commission within 10 business days of completion with monitoring reports to be provided for two growing seasons (one per season by October 31.) Scott will revise the narrative to a site visit after notice is given to the Commission that the work is complete. The approval letter will require 72 hours-notice to the Commission office prior to the commencement of any work to be done under the restoration order.

Public Comment:

Ben asked about the quorum. Maria explained that the quorum count began with the formal posted public hearing which was October 12. The quorum was stated at the beginning of tonight's hearing.

Ben also submitted a letter dated today and received just before this meeting started. Reference is made to this letter for the details of his objections on behalf of his client Cheryl Eppel. His objections include, but are not limited to mapping, his clients lack of access, inability to file an

independent restoration plan (even though his client was not required to submit one) and the role of the Commission to require the Doanes to provide access to the Eppels.

Ben told the meeting that he was on the site with the Insurance adjustor on August 5, that he has taken numerous photos of the site from the Eppel property and that he only observed dense matting of green brier growing back.

Whit replied to Ben's letter and comments by stating that it would be almost impossible to figure out what was there without extensive work to remove the top soil. He disagreed with Ben's assertion that there is a desire to remediate the site to exactly as it was. The board is trying to remediate something that happened that was not a " tragic rape of the land" but it was disturbed and the Commission is trying to put it in order with a simple, straightforward plan. Whit acknowledged that Ben and his experts have been barred from the property, but they could have stood at the border of the property and look and anyone with reasonable common sense could come up with some outline of plan.

Chris Lucas of Lucas Environmental, hired by Cheryl Eppel was present in place of Tom Liddy. He told the members that he could not speak to the details of restoration plan because he hasn't been to the site. The notes his associate took at the October 26 meeting indicate that the board wanted all trees removed from the proposal, that shrubs be removed north of the yellow line and concentrated south of the yellow line. He advocated waiting until June 2022 to do any planting and reassess in September.

Geraldine made a motion, seconded by Peter to accept the restoration plan as amended (during this discussion.)

Discussion on the motion:

Richard Hennessey, attorney for Nancy Eppel stated that he supports Attorney's Hall's statement about access to the Doane property to be able to prepare a comprehensive or competing restoration plan. He suggested that Town counsel could advise the board on requiring the Doanes to provide access to the Eppels. The Commission needs to understand the position of the Eppels. In his opinion this whole process is being dictated by the Doanes. To the extent the Enforcement Order contemplates some consensus on a restoration plan, the Eppels should be allow to submit their own restoration proposal.

Richard Reiling, attorney for the Doanes, said that Nancy Eppel has made no effort to visit this site except one time in August. He claims that in August, both Nancy and Cheryl Eppel were granted access to the property in August. And that the Eppels failure to hire a consultant has caused repeated delays. The restoration plan being proposed is modest and there is no reason not to proceed.

Ben stated that if the Commission allows the area in question to be altered without giving the Eppels an opportunity to respond, they will have "sponsored spoliation of evidence".

Maria summarized what details of the restoration plan to be approved by the motion: the proposed restoration narrative and plan prepared by Oxbow Associates dated November 9, 2021 will be revised to show 2 white Oaks, 2 Easter Red Cedars and 18 shrubs to be planted (quantities and sizes to be chosen by Oxbow Associates as detailed in the narrative) with no plantings done within 10 feet of the top of the bank.

Roll call vote on the motion: Angela -aye, Donna-aye, Geraldine -aye, and Peter -aye.

Scott will make the changes to the narrative and the plan. Scott will submit it and Maria will write an approval letter to be signed by the Chair.

Administrative: The December 14, 2021 meeting will be held at 4:30 to accommodate a lengthy agenda for that evening.

There being no other business to discuss, the meeting was adjourned at 6:26 PM

Respectfully submitted,

Maria McFarland
Board Administrator
APPROVED
JANUARY 25, 2022